

STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
WITH RESPECT TO
VARIOUS BENEFITS LEGISLATION UNDER CONSIDERATION

WASHINGTON, D.C.

JULY 10, 2001

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.7 million members of the Veterans of Foreign Wars of the United States and its Ladies Auxiliary, I appreciate the opportunity to comment on the various benefits bills under consideration today.

I would like to take a moment, Mr. Chairman, to congratulate you on becoming Chairman of this subcommittee. We look forward to your stewardship and stand ready to assist you in any way that we can.

The legislation under consideration today is varied. It covers a wide variety of topics that are a concern to our members and to all of our nation's veterans. In general,

the VFW supports the legislation being offered, with some exceptions that will be noted below.

H.R. 862--To amend title 38, United States Code, to add Diabetes Mellitus (Type 2) to the list of diseases presumed to be service-connected for veterans exposed to certain herbicide agents.

Mr. Chairman, the VFW strongly supports this legislation that would add a presumption of service connection for veterans who have contracted Diabetes Mellitus (Type 2 Diabetes), as a result of exposure to certain herbicides. This legislation would provide the critically needed benefits for veterans and their dependents who have had to suffer the consequences of this devastating disease.

As part of PL 102-4, *The Agent Orange Act of 1991*, The Institute of Medicine has been charged with determining the effects of Agent Orange, and other herbicides, on those veterans who were exposed during service. Their November 2000 report, *Veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes*, found that “there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the containment dioxin and Type 2 diabetes.”

The science clearly indicates that a connection between herbicide exposure and Type 2 diabetes is likely. Because of this, it is important that this legislation be enacted quickly so that our Vietnam veterans can receive treatment for this disease.

H.R. 1406--Gulf War Undiagnosed Illness Act of 2001

The VFW supports this legislation to further clarify the standards used for compensation of Persian Gulf Undiagnosed Illness and to extend protection to veterans by allowing them to continue to receive compensation while they are participating in medical research projects without the fear of losing compensation.

With your permission, I would like to summarize the basis for our support.

In 1998, former Chairman of the House Veterans Affairs Committee, Congressman Bob Stump wrote a letter to the Secretary of Veterans Affairs articulating the committee's concerns surrounding the way in which the VA was narrowly interpreting and implementing PL 103-446, *The Persian Gulf War Veterans' Act*, that was enacted to "provide compensation to Persian Gulf War veterans who suffer disabilities resulting from illnesses that cannot now be diagnosed or defined, and for which other causes cannot be identified...."

In his letter, then Chairman Stump expressed his trepidation and displeasure in that, "[f]or the Department of Veterans Affairs to adjudicate claims on the basis of a rigid distinction between diagnosed and undiagnosed conditions is to ignore altogether what we have come to learn about chronic fatigue syndrome, fibromyalgia, and related ill-defined conditions. Continued reliance on the current regulation (Title 38 CFR section 3.317) ignores that medicine does not fully understand these conditions and that physicians may or may not diagnose them. As is apparent from the literature, they

present with many of the same symptoms which have been described in Persian Gulf veterans from the earliest reports and which were the subject of Congress's effort to service-connect veterans who suffer from symptoms of illness which cannot be clearly defined. Thus, for the regulation to effectively rule-out service connection under that law in any case in which a VA physician happens to assign a diagnostic label associated with an ill-defined illness, is to frustrate the purposes of this law, and to raise a serious question of deprivation of due process."

The Undersecretary for Benefits' written response differed markedly from the Committee's interpretation. The VA General Counsel upheld that section "1117 (a) of 38, USC, authorizes service connection on a presumptive basis only for disability arising in Gulf War veterans due to undiagnosed illness and may not be construed to authorize presumptive service connection for any diagnosed illness, regardless of whether the diagnosis may be characterized as poorly defined."

Further, this subcommittee held a hearing October 26, 1999, addressing Persian Gulf War Veterans' Issues in which this specific topic of disability compensation for undiagnosed illness was brought up. When challenged by members of this subcommittee, the Undersecretary for Benefits reinforced the VA's previous position that "the way the law is written, the way your compensation program is structured, we are granting about as many [claims] as we can."

This debate between Congress and the VA over the intent of the law has been going on too long and at the great expense of ill Persian Gulf War veterans. Therefore, in order for Congress to fulfill what it considers, and the VFW concurs, to be the original intent of PL 103-446, legislation such as H.R. 1406 is warranted. Ten years after the Persian Gulf War, the literature supports that certain chronic symptoms are more prevalent among Persian Gulf War veterans. We agree with one VA Health official in that the analysis of “these clusters of symptoms may provide the kind of information that the committee would like to see inform the compensation process.” We appreciate the efforts of this Congress and this subcommittee to act on legislation that would ensure that Persian Gulf veterans are not denied compensation for undiagnosed illness under PL 103-446 because of an overly narrow interpretation in how their claims are adjudicated.

As for the measure being proposed that would allow Persian Gulf veterans to participate in a medical research study without loss of benefits if their service-connection for undiagnosed illness is suddenly found to be a condition that has a known diagnosis, it enjoys our full support.

For example, there are veterans who are service-connected for “motor neuron disorder, etiology unknown” that could now very well “mask as Amyotrophic Lateral Sclerosis (ALS) or “Lou Gehrig’s Disease.” Certainly, those individuals should have no impediments, either perceived or actual, that would inhibit their participation in an important research program, such as the one being conducted by the Durham VAMC. This legislation would remove the fear of losing their benefits.

We are using this scenario for another very important reason. During October 26, 1999 Congressional testimony before the Subcommittee on Benefits, we raised the specter of a disproportionate number of Gulf War veterans contracting ALS. In a dialogue with then-Chairman Quinn, we mentioned that ALS is “one disability that right now seems to ... qualify for presumption of service connection” as a result of service in the Persian Gulf War area of operations. We based that supposition on the fact that, at that time, “the VA has identified 28 Gulf War veterans with ALS where the expected incident rate should be 27.” We also further speculated “the 28 is most likely an under-reported number, mainly because there are a lot of veterans ... [with a present undiagnosed illness of] ‘motor neuron disorder, etiology unknown’.”

We now understand that the number of Gulf War veterans participating in the Durham study is around 80. This only leads further credence to our suggestion, during that October 26, 1999 Congressional testimony that there should immediately be established a presumption of service connection for ALS as a result of Persian Gulf in-theater service. Further, we strongly recommend, Mr. Chairman, that additional legislation be swiftly introduced and enacted that will accordingly do so.

H.R. 1435--Veterans' Emergency Telephone Service Act of 2001

This legislation would authorize the Secretary of VA to award grants to companies for the purposes of providing a national toll-free hotline to provide

information and assistance to veterans. We support this measure without further comment.

H.R. 1746--To amend title 38, United States Code, to require that the Secretary of Veterans Affairs establish a single '1-800' telephone number for access by the public to veterans benefits counselors of the Department of Veterans Affairs and to ensure that such counselors have available to them information about veterans benefits provided by all Federal departments and agencies and by State governments.

We applaud the intent of this measure to establish a 1-800 line as a means to expand public access to veterans' benefits counselors at the VA. We cannot, however, support this legislation in its current format.

Among other issues, this legislation may have the unintended consequence of misdirecting scarce resources. As presently constructed, this legislation could necessitate the shifting of personnel and resources from other vital areas.

H.R. 1929--Native American Veterans Home Loan Act of 2001

We support this legislation to extend the Native American veteran housing loan pilot program. Currently, this program is set to expire at the end of 2001. This legislation would extend the program an additional four years until 2005.

In a 1998 report entitled *Native American Housing: Homeownership Opportunities on Trust Lands Are Limited*, the GAO determined that private institutions

have rarely supplied home purchasing loans. GAO concluded, “Federal government assistance is nearly always required to provide home ownership opportunities to Native Americans on trust lands.”

Although the report was written in 1998, the situation has not improved for Native Americans. It is clear that this program should be extended. We would also recommend, that this program not only be extended until 2005, but it should be continued permanently.

H.R. 2359--To amend title 38, United States Code, to authorize the payment of National Service Life Insurance and United States Government Life Insurance proceeds to an alternate beneficiary when the first beneficiary cannot be identified, to improve and extend the Native American veteran housing loan pilot program, and to eliminate the requirement to provide the Secretary of Veterans Affairs a copy of a notice of appeal to the Court of Appeals for Veterans Claims.

The VFW supports payment of insurance proceeds to an alternate beneficiary when the first beneficiary cannot be located. However, we recommend that the time limit to pay the first beneficiary designated by the insured be extended to four years, and if within that time period, no claim has been filed, the Secretary may, within five years, designate a person equitably entitled to the proceeds.

We also support the extensions of the Native American veteran housing loan pilot program, for the reasons above.

We further agree with the proposal to eliminate the requirement for providing a copy of notice of appeal to the Secretary.

H.R. 2361--Veterans' Compensation Cost-of-Living Adjustment Act of 2001

The Veterans of Foreign Wars supports the provisions of the Veterans Compensation Cost-of-Living Adjustment Act of 2001. This bill increase the rates of compensation for veterans with service-connected disabilities, and the rates of dependency and indemnity compensation paid to the survivors of certain disabled veterans.

Although we support this legislation, we oppose the provisions of Sec 2 (c)(3). This section requires that any amount that results in something other than a whole dollar, be reduced to the lowest whole dollar amount.

It is our understanding that the practice of rounding down to the nearest whole dollar was introduced following the passage of the Omnibus Budget Reconciliation Act of 1990 (OBRA). While we certainly understand the importance of the OBRA law in terms of assisting government managers work towards a balanced budget, it is the view of the VFW that our veterans have done more than their fair share to help balance the budget and this need not continue in this day of budget surpluses. We, therefore, oppose the permanent extensions of the OBRA provision that permits rounding down compensation payments.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions that you, or the members of the subcommittee, may have.